

MAJOR LEAGUE BASEBALL ANTITRUST REFORM

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED FIFTH CONGRESS FIRST SESSION

ON

S. 53

A BILL TO REQUIRE THE GENERAL APPLICATION OF THE ANTITRUST
LAWS TO MAJOR LEAGUE BASEBALL, AND FOR OTHER PURPOSES

JUNE 17, 1997

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MAJOR LEAGUE BASEBALL ANTITRUST REFORM

TUESDAY, JUNE 17, 1997

**U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.***

The committee met, pursuant to notice, at 10:02 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Specter, DeWine, and Leahy.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The CHAIRMAN. We will call this hearing to order.

Clarifying that antitrust laws apply to Major League Baseball is something that will benefit sports fans across the country, young and old, rich and poor, Democrat and Republican. As evidenced by the interleague play, agreements being reached on long-term player and minor league contracts, and the continuing on-field heroics of players like Cal Ripken and Ken Griffey, Jr., we are witnessing a historical period for Major League Baseball. I have only mentioned a few of them, as you know, of the great heroes.

Senator Leahy and I believe that we should take advantage of this opportunity to ensure that the coming years will indeed be among baseball's finest by doing all we can to minimize the potential for more of the bitter labor disputes which have plagued Major League Baseball.

Baseball has witnessed more work stoppages than all other professional sports combined, capped by the devastating 1995 strike which led to the cancellation of the World Series and dealt a blow to the hearts and loyalty of baseball fans from which the sport is only now beginning to recover.

While there are, of course, different factors contributing to baseball's recently tumultuous labor relations, there is one root cause about which we in Congress can do something. With their current antitrust status, Major League Baseball owners can, unlike the owners in any other professional sport, conspire and collude without restraint—the precise practices the antitrust laws were designed to prohibit. They can take advantage of this unique legal position to gain leverage in their negotiations with the players and their representatives.

Making it clear to the players, owners, and courts that the anti-trust laws apply to Major League Baseball therefore will not only put baseball on a level playing field with the other professional

sports, but will also put the owners on a more level playing field with the players, and will thereby bring stability to labor relations in this area. Players, fans, investors, municipalities, and ultimately the owners themselves will benefit.

Thus, on the first day of this Congress, I, along with Senators Leahy, Thurmond, and Moynihan, introduced S. 53, the Curt Flood Act of 1997, which, like its predecessor, S. 627, simply makes clear that Major League Baseball, like all other professional sports, is subject to our Nation's antitrust laws, except with regard to team relocation, the minor leagues, and sports broadcasting. It overturns the Court's mistaken premise that baseball is not a business involved in interstate commerce, and it eliminates the unjustifiable legal precedent that individuals who play professional baseball should be treated differently from those who participate in other professional sports. Perhaps most importantly, it helps ensure that the 1995 labor dispute and the consequent cancellation of the 1995 World Series will never happen again.

[A copy of S. 53 follows:]

105TH CONGRESS
1ST SESSION

S. 53

To require the general application of the antitrust laws to major league baseball, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 21, 1997

Mr. HATCH (for himself, Mr. LEAHY, Mr. THURMOND, and Mr. MOYNIHAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To require the general application of the antitrust laws to major league baseball, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Curt Flood Act of
5 1997".

6 **SEC. 2. APPLICATION OF THE ANTITRUST LAWS TO PRO-**
7 **FESSIONAL MAJOR LEAGUE BASEBALL.**

8 The Clayton Act (15 U.S.C. 12 et seq.) is amended
9 by adding at the end the following new section:

1 “SEC. 27. (a) Subject to subsection (b), the antitrust
2 laws shall apply to the business of professional major
3 league baseball.

4 “(b) Nothing in this section shall be construed to af-
5 fect—

6 “(1) the applicability or nonapplicability of the
7 antitrust laws to the amateur draft of professional
8 baseball, the minor league reserve clause, the agree-
9 ment between professional major league baseball
10 teams and teams of the National Association of
11 Baseball, commonly known as the ‘Professional
12 Baseball Agreement’, or any other matter relating to
13 the minor leagues;

14 “(2) the applicability or nonapplicability of the
15 antitrust laws to any restraint by professional base-
16 ball on franchise relocation; or

17 “(3) the application of Public Law 87-331 (15
18 U.S.C. 1291 et seq.) (commonly known as the
19 ‘Sports Broadcasting Act of 1961’).”.

When I first sponsored similar legislation in the 103d Congress, Congress was told that baseball owners would never support it. Today, for the first time, I am pleased to report that the owners have not only pledged in the new collective bargaining agreement to work with the players to pass legislation clarifying that professional baseball is subject to the antitrust laws with regard to labor relations, but just last week reached agreement with the players on specific language that would accomplish this objective.

While I and the members of this committee would like to examine this proposed alternative to S. 53, I think it is safe to say that the most important impediment to passage of baseball antitrust reform has been eliminated, and that it is truly a momentous occasion when Major League Baseball owners have aligned in support of such reform.

Given this recent positive development, I must say that I am surprised that the owners were unable to send a representative to testify at this hearing. We invited them and we expected them to be here. I should note that on the basis of repeated assurances that such an agreement between the players and owners was imminent, I have, since the beginning of this Congress, repeatedly agreed at the owners' request to postpone this hearing and committee consideration of S. 53.

I will not repeat the numerous such requests for more time to which I have agreed, but I will insert for the record a chronology of the relevant requests and delays at the owners' behest.

[The chronology follows:]

CHRONOLOGY OF EVENTS

December 7, 1996—The owners and the players sign a memorandum of understanding, which deals with time-sensitive provisions to be included in the collective bargaining agreement. A section of the memorandum calls for both the players and the owners to work together to pass legislation that would give players the same antitrust rights as other professional athletes at the major league level but that would not change the application of the antitrust laws in any other context.

January 21, 1997—Senators Hatch, Leahy, Thurmond and Moynihan introduce S. 53, the Curt Flood Act of 1997.

February 6, 1997—Representatives from the owners and the players meet with Senator Hatch's staff to discuss the ongoing negotiations and the legislation. Senator Hatch's staff indicates that the Senator would like to place the bill on the calendar for the mark-up scheduled for February 13, 1997, recognizing that it will be held over. The owners make clear that a final agreement is near completion, that both sides are moving "expeditiously," and that legislative language reflecting the memorandum of understanding would be drafted if the mark-up is scheduled. They also indicate that agreement on language should be relatively easy. They ask that Senator Hatch postpone mark-up until after the collective bargaining agreement is finalized. The players' representatives indicate that they will be sending draft language to the owners and were ready to share these drafts with Committee staff.

February 7, 1997—The players' first draft is sent to the owners through their Washington lobbyists and their negotiating team.

A Few Days Later in February, 1997—The owners indicate that there will be no work on legislative language until the rest of the contract is completed and signed, but completion will occur before the end of February.

Middle of February, 1997—Senator Hatch agrees to the owner request to delay mark-up and a hearing for a few weeks, until the collective bargaining agreement is completed.

February 20, 1997—Senator Hatch's staff meets with Stanley Brand, representative for Minor League Baseball, requesting that he communicate any proposed changes to S. 53 either at the meeting or subsequent to it. Brand refuses to offer any suggestions at that time or thereafter, and refuses to return staff phone calls for over 3 months.

February 28, 1997—Senators Hatch and Leahy send out a Dear Colleague letter announcing their intention to move the legislation quickly.

March 11, 1997—A second meeting between representatives from the players and the owners is held with Senator Hatch's staff. The owners' representative indicates that pressure from Senator Hatch has helped to move the negotiating process along, that neither side wants Congress to act on the legislation until the contract is completed and signed. The players state that since they have no idea when the contract will be finalized, they will defer to Senator Hatch on timing, even if that means moving the legislation before the contract is signed. They also offer two new versions of the legislation for the owners' review.

March 13, 1997—The Senate Judiciary Committee mark-up, with S. 53 on the agenda, is postponed due to lack of a quorum.

March 14, 1997—The collective bargaining agreement is completed and signed.

March 20, 1997—The Senate Judiciary Committee holds a mark-up, at which time both Senators Hatch and Leahy make it clear that they are tired of waiting and want the promised language from the parties. Senator Hatch announces that the Committee would mark-up the baseball bill after the Easter recess, and that he has circulated a draft substitute amendment taken directly from the language of the collective bargaining agreement. He stated that the players support the amendment, but the owners would not take a position on his draft.

March 28, 1997—Notwithstanding his refusal to work with Senator Hatch's staff, Stanley Brand writes letter to Senator Biden, requesting his help in defeating S. 53, and stating that he was "surprised to be asked to cure the bill's defects before Congress has conducted any study or review on its impact on grassroots baseball."

April 14, 1997—The owners and the players meet with Senator Hatch. The owners' chief negotiator asks for more time to resolve this issue and asks Senator Hatch to delay Committee consideration at this time. When pressed on how long he needs, he subsequently indicates four weeks. As a result, Senator Hatch announces that he will move the bill to mark-up on May 14, 1997.

May 8, 1997—Owners agree to meet with the players in New York. Drafts are exchanged.

May 14, 1997—This latest deadline is missed.

May 16, 1997—The players agree to language offered by the owners' representatives. After the players' acceptance, the owners negotiators indicate that this language will have to be taken to the owners to see if they can accept it.

Early June, 1997—Senator Hatch's staff repeatedly requests hearing dates from owners, players, and minor league representatives. Stanley Brand agrees to testify at June 17, 1997 hearing.

June 10, 1997—Senator Hatch announces that a hearing on S. 53 will be held on June 17, 1997.

June 12, 1997—Owners sign new 10 year agreement with minor leagues and ratify agreement with players regarding legislative language on antitrust reform.

June 13, 1997—Senator Hatch sends formal invitation letters for June 17 hearing. Stanley Brand fails to appear at scheduled meeting with Senator Hatch's staff. The owners indicate that they will refuse to attend the hearing or any subsequent hearing until George Steinbrenner's suit against the owners for antitrust violations is resolved.

June 16, 1997—Bud Selig and Stanley Brand write Senator Hatch. Selig indicates he will not attend June 17 hearing. Brand requests that the hearing be postponed so that he can have an opportunity to draft proposed amendments. At 6 p.m., Brand meets with Senator Hatch's staff indicating that, contrary to his position 1 week earlier, he will not testify at June 17 hearing.

The CHAIRMAN. Mr. Selig has written me indicating that because of a conflict, he is unable to attend today. I understand and appreciate his conflict, but one would expect that the owners could have sent another representative in his stead, as we had requested.

Mr. Stanley Brand, representing the minor leagues, has also written me requesting that this hearing be delayed, although assuring me that he would be prepared to provide specific legislative suggestions later this week. I had intended to meet with him yesterday, but he was unable to meet with me. I had hoped that by meeting with him, we might even have avoided this hearing, but for some reason I couldn't get with him.

Now, while I look forward to finally receiving Mr. Brand's comments, I must say that I fail to see why he cannot present them today, especially given the fact that we asked for his views in February and that Mr. Brand specifically told the committee just last week that he would attend today's hearing.

Moreover, given Mr. Brand's statement in a March 28, 1997, letter to Senator Biden that he was "surprised" to be asked for legislative input before the committee had conducted any study or review on its impact on the minor leagues, it now seems odd that he is asking the committee to postpone a hearing until he has had an opportunity to draft legislation.

That being said, it is, as I have indicated from the outset, my sincere intent that any legislation we enact have no negative impact on the current law governing the minor leagues, and I truly do look forward to hearing from Mr. Brand within the next week.

I would note that this legislation has always been aimed at Major League Baseball labor relations, not at addressing any issue regarding the minor leagues, and that S. 53 even states in express terms that it shall have no effect whatsoever on the minor leagues. To the extent that minor leagues believe this language unintentionally changes the law as it applies to the minor leagues, I will certainly consider their views. This is perhaps a subject on which we will hear more from our witnesses.

Present with us today are Don Fehr, executive director and general counsel of the Major League Players Association, and Dan Pelter, a former minor league player. I would like to take this opportunity to thank them for making the effort to be with us here today. I would also like to thank Senator Leahy, our cosponsors Senator Thurmond and Moynihan, and Senator DeWine and other members of this committee for their continued assistance in this important issue.

This is an important hearing. This will be the one time we will listen, and I have to say that we will listen to input from both the owners and the minor leagues, hopefully, by the end of this week one way or the other. But if not, we are going to proceed as best we can, and so we will just see what happens from here.

There is nobody from the minority here, so I think what we will do is begin with you, Mr. Fehr, and then turn to you, Mr.—am I pronouncing it right, Peltier.

Mr. PELTIER. Peltier.

The CHAIRMAN. You bet. I appreciate having both of you here and we will look forward to your testimony at this time.

PANEL CONSISTING OF DONALD A. FEHR, EXECUTIVE DIRECTOR, MAJOR LEAGUE PLAYERS ASSOCIATION, NEW YORK, NY; AND DAN PELTIER, FORMER MINOR LEAGUE BASEBALL PLAYER, HASTINGS, MN

STATEMENT OF DONALD A. FEHR

Mr. FEHR. Thank you, Mr. Chairman, and Senator DeWine. My name, as you know, is Donald Fehr, and for more than a decade now I have been privileged to serve as the executive director of the Major League Baseball Players Association. The Players Association, of course, is the labor organization that represents all major

league players with respect to terms and conditions of employment, and also, interestingly enough, managers, coaches, and trainers with respect to some.

Before making my brief comments here this morning, I do want to take a moment to thank and express the appreciation of all major league players to the chairman and to the ranking member for the interest that they have shown in this issue, the steadfastness with which they have pursued it during the tumultuous years which have preceded 1997, the careful attention they have given the various matters which have come into play, and perhaps most of all to the chairman for his patience, especially over the last 6 months or so.

In November 1996, after just about 4 years of very difficult negotiations, including a very long strike, to which the chairman has alluded, and a long period of negotiations after that strike ended following an injunction issued pursuant to section 10(j) of the National Labor Relations Act against the owners, we were finally able to reach a collective bargaining agreement. It is comprehensive. It is long-term. It will expire most likely at the end of the 2001 season, and it has built into it a number of provisions, the object and purpose of which is to cause the players and the owners to work together on a day-by-day basis to operate the game, to rebuild the game, to reach out to the fans, one result of which, we hope, will be that the next time we negotiate, the relationship between the two parties will be fundamentally different than it has been at any time in the past.

That is the hope, and we certainly have a large task in front of us. There have been in Major League Baseball eight work stoppages in the last eight negotiations, dating back to 1972, a fair amount of strikes and a fair amount of lockouts. There has not been a settlement without a work stoppage since 1970. Our task for the next go-around is to make sure that that record is broken, and broken with as loud a thump as we can manage.

In this new agreement, we have, to which the chairman referred, also reached, in principle, an agreement on the antitrust laws. As I think everyone knows, the major league owners have believed that, at least with respect to player relations issues, they have had a total exemption to the antitrust laws. And we have believed, and I have testified on many occasions here, that that has been a principal cause of our ongoing disputes.

Simply put, what it does is give the owners an incentive not present in the other professional team sports to attempt to effectively break the union. The reason that they could do that is that if they would accomplish that, they then could set the terms and conditions free of any restraint that would otherwise be imposed by the antitrust laws. That is not the case and has not been the case in the other professional team sports, and whatever else we can say about those sports, they have had far fewer disruptions on the field and the difficulty that such disruptions cause the fans have been more often avoided than it has been in baseball.

I will not make an attempt to read my statement that has been prepared for the record, nor to otherwise indicate my views on antitrust and sports, and baseball in particular. I think those views are

well-known from my prior testimony. I will, of course, be pleased to answer any questions about it.

Let me then turn briefly to the nature of the legislation at hand, and in particular to the agreement that was reached between the players and the owners. Last November when we were concluding the agreement, the players made it clear that they wished, at last, to be treated under the antitrust laws as other professional athletes similarly situated, basketball and football players in the NFL and the NBA being the most obvious examples.

The owners wanted some things, too, and eventually we reached a compromise which is reflected in article XXVIII of the collective bargaining agreement. It is a very carefully drawn provision and it says that the players and the owners will jointly request and cooperate in lobbying the Congress to pass a law that will clarify that major league players are covered under the antitrust laws to the same extent as other professional athletes similarly situated, along with a second provision and that second provision being one which hopefully will obviate any concerns that third parties have, and that is that whatever the application of the antitrust laws is in any other context or circumstance or with respect to any other third party or parties that the passage of such legislation would not change the application of the antitrust laws. It has the benefit of not attempting to specifically define how the antitrust laws would apply in any particular circumstance, that being left to such legislation that becomes law to interpretation in the event that there is a dispute.

We then had a second round of negotiations which was conducted sporadically, essentially, between March and late May, and the purpose of that round of negotiations conducted principally between myself on behalf of the players and Randy Levine, who is the owners' chief negotiator, on behalf of the major league owners, was to see if we could agree on specific language that we could suggest to the Congress be considered in order to effectuate the collective bargaining provision to which we had agreed.

We were able to reach agreement. The players have adopted it, and as the chairman indicated, we have been advised by Mr. Selig that the owners have also agreed to the negotiated provision, and I believe a copy of it has already been submitted to the committee. I think if you review it, you will find that it is a very carefully drafted provision.

The "Purpose" section simply replicates the language of the collective bargaining agreement. The substantive sections provide that the antitrust laws will apply to the business of organized professional major league baseball acts, practices, or agreements relating to or affecting employment to play baseball at the major league level, or, in other words, as the chairman summarized, labor relations at the major league level.

The remainder of the suggested language makes it clear that whatever the law otherwise is in any context is not affected one way or another by the passage of this legislation. We borrowed liberally, I think it is fair to say, from the provisions of S. 53 and some of the other bills that were submitted by the chairman and other Senators in the prior Congress to make certain as best we could that we were accomplishing that goal.

I do believe that a fair reading of this suggested language should reassure any third party, be they the minor leagues or otherwise, that the passage of this legislation would have no effect one way or another on their rights under law as existed otherwise with respect to this legislation. It does carry a specific provision that says that more specifically, but not by way of limitation, this section shall not be deemed to change the application of the antitrust laws to the amateur draft, the reserve clause as applied to minor league players, or the various agreements between the major leagues and the minor leagues, as well as other exceptions relating to franchise location, relocation, the Sports Broadcasting Act, and so on.

With that, I think I am prepared to conclude the remarks I would like to give this morning, other than to say that the Players Association and the major league players supported S. 53 and the similar bills offered in prior Congresses, and still do. We have seen a copy of at least one narrow amendment that was being circulated to S. 53 which we also think is sound public policy and we support.

But what we are asking the Congress to do now, and all that we are asking the Congress to do now is to enact legislation that will effectively give major league players the equal protection of the antitrust laws, and to do so in a way which will avoid, if the Congress so chooses, any of the other issues that swirl around antitrust in sports and antitrust in baseball that can and have been the subject of so much contention.

I, of course, will be pleased to answer any questions that any of the members have. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Fehr.

[The prepared statement of Mr. Fehr follows:]

PREPARED STATEMENT OF DONALD A. FEHR

Mr. Chairman, Senator Leahy and members of the Committee, my name is Donald Fehr, and I serve as the Executive Director of the Major League Baseball Players Association. I appreciate the opportunity to appear before the Committee today.

This Committee has spent considerable time in the last four years studying anti-trust issues as they relate to baseball. On behalf of all major league players, I want to thank Chairman Hatch and Senator Leahy for their interest in and attention to these issues. My views on these matters are well known from my previous testimony before this and other committees, and need no repetition here.

As has been often noted, over the last 25 years, there have been eight consecutive work stoppages (strikes and lockouts) in major league baseball, more than in the other three major team sports (football, basketball and hockey) combined. We believe that this results, in significant part, from the belief of the major league owners that major league players, unlike their counterparts in basketball, football and hockey, have no rights under the antitrust laws. Major league players have sought, and continue to seek, the same rights under the antitrust laws as other professional athletes similarly situated, no more but no less.

The importance of the antitrust laws to the collective bargaining process in professional sports is often misunderstood. It is not necessarily the use of the remedy that is important; rather, it is the opportunity to resort to the remedy that matters. It has been the desire to have an alternative course of action available to them, an alternative course which would have a moderating influence on the bargaining process, that has been at the heart of the players' efforts in the antitrust area. As we learned too well in 1994, the players effectively had only one choice: accept the owners unilaterally imposed terms and conditions of employment, or strike.¹ Unlike

¹ It is, of course, possible that the Courts would now hold, as we would argue, that in the current circumstances, major league players do have the protection of the antitrust laws to the same extent as other professional athletes. However, it is extremely unlikely that players would forego their right to strike against the possibility of such a ruling.

other similarly situated athletes, baseball players have no other alternative. And unlike other professional sports team owners, who know that their players are protected by the antitrust laws, baseball owners have believed that major league players do not have such protection, and therefore believe that if they can break the union, the players have no recourse, and the owners can impose whatever conditions they choose. That does not foster labor peace. Accordingly, major league players have petitioned Congress to ensure that they have the same rights and protections under law as do other similarly situated athletes. We are prepared to continue that effort in order to avoid in the future what has been the seemingly inevitable disruption in the game every time we negotiate.

THE NEW COLLECTIVE BARGAINING AGREEMENT

Many people were surprised to learn that there was any mention of antitrust legislation in the new collective bargaining agreement. With both sides knowing that this effort would continue until either a bill was passed or the next work stoppage was upon us, the parties chose to address this issue in the recently signed collective bargaining agreement. Let me explain how Article XXVIII came to be.

The collective bargaining agreements in professional football, basketball and hockey typically expire at the end of the month of the championship season, which means that bargaining may typically commence some weeks prior thereto. In baseball, however, the collective bargaining agreements have expired on December 31 of the final year of the contract. As a practical matter, this means that individual player contract negotiations for the next season begin before the contract. Thus, notwithstanding the fact that negotiations have not yet resulted in a new collective bargaining agreement, new individual baseball contracts for the following season are signed under the terms of the expired contract.

This time around, the baseball owners sought the players' agreement to change the expiration date of our collective bargaining agreement to October 31 of the last year of the agreement, just after the end of the World Series. They believe that by doing so, their negotiating position may be enhanced. Owners believe that an earlier expiration date would give them time to commence negotiations and, if necessary, declare an impasse and impose new terms and conditions of employment for new individual contracts for the following season. In the end, the players were prepared to accommodate the owners' request, but only on the condition that they have the same rights under the antitrust laws as do the athletes in the other sports.

As a result, Article XXVIII of the new Basic Agreement was drafted. Article XXVIII provides that the expiration date of the contract will move to October 31, if legislation clarifying that baseball players have the same rights under the antitrust laws as do basketball and football players is enacted by the end of the 105th Congress. If legislation providing that clarification is not enacted by the end of the 105th Congress, the expiration date reverts to December 31 of the final year of the agreement. The players and owners were very careful to make certain that the bill they would jointly support would deal only with major league player issues; the scope and effect of the antitrust laws is not changed in any other respect. In other words, whatever the law is with respect to other issues or third parties, it will continue to be—this legislation will do nothing to change it.

The relevant portion of Article XXVIII reads as follows:

"the Clubs and the Association will jointly request and cooperate in lobbying the Congress to pass a law that will clarify that Major League Baseball Players are covered under the antitrust laws (i.e., that Major League Players have the same rights under the antitrust laws as do other professional athletes, e.g. football and basketball players), along with a provision that makes it clear that passage of that bill does not change the application of the antitrust laws in any other context or with respect to any other person or entity."

Simply put, the owners and the players reached an agreement to resolve their differences on the expiration date of the contract in conjunction with resolving their differences on the application of the antitrust laws to major league baseball players. No other parties or issues are affected or implicated by this agreement.

LEGISLATION

Early in this Congress, Senators Hatch, Leahy, Thurmond and Moynihan introduced S. 53. That bill constitutes a much broader clarification of the application of the antitrust laws to major league baseball than the bill contemplated in the collective bargaining agreement. As was the case in prior bills, however, S. 53 made clear that it was not to affect the application of the antitrust laws with respect to franchise relocation issues or the Sports Broadcasting Act, nor was it to affect "the ap-

plicability or nonapplicability of the antitrust laws to the amateur draft of professional baseball, the minor league reserve clause, the agreement between professional major league baseball teams and the teams of the National Association of Baseball (sic), commonly known as the 'Professional Baseball Agreement', or any other matter relating to the minor leagues."

We fully supported that bill, and continue to believe it to be wise public policy. But the hope was, and continues to be, that the collective bargaining agreement recently signed will lead to the enactment of legislation relating only to major league players quickly and cleanly, so that the owners and players can put this issue behind them and set their sights squarely on working together to repair and improve the game.

I have been advised that a substitute amendment recently circulated to S. 53, apparently in anticipation of an early agreement to legislative language effectuating the collective bargaining agreement, and to keep the process moving forward. That amendment was taken virtually verbatim from Article XXVIII of the new Basic Agreement. As such, we had no objection to it when it was originally offered, nor do we now. It was the Association's hope, however, that to the extent the owners and players could agree to legislative language that accurately reflected the intent of that amendment, and which the parties felt comfortable supporting, the legislative process would be further facilitated.

To that end, and at the strong urging of Senators Hatch and Leahy, the Association has attempted to develop with the owners an acceptable alternative to that amendment. On 16 May, 1997 representatives of the Players Association reached an agreement with representatives of Major League Baseball on language that the MLB representatives would take to the MLB owners for approval. My understanding is that they did so last week. Hopefully, by today, the Chairman has been advised of the owners' actions on this suggested language.

THE MINOR LEAGUES

In the past, the minor leagues have opposed all legislation to bring increased stability to the relationship between major league owners and major league players, notwithstanding express language in each such bill stating that the bill did not affect the application of the antitrust laws as applied to the minor leagues. Although never articulated in a manner that made sense to me, the argument seems to have been, that if the antitrust laws applied to major league player relations, that would somehow result in a reduction of the number of minor league teams that the major league owners would support. This assertion is particularly hard to understand because major league players were essentially granted free agency by an arbitrator in 1975, interpreting the language of the standard player contract. Player-owner talks have centered on free agency in each negotiation since that time. Every round of collective bargaining since 1976 has been a battle by the owners to reduce players' free agency, and by the players to keep it. It is not the protection of the antitrust laws that matter, it is whether or not the players can be free agents. The position of the minor league owners seems to me to be beside the point.

In any event, of course, the sponsors of S. 53 have gone out of their way to include plain language in the bill insulating the minor leagues from the application of the bill and thus giving more than adequate protection to the minor leagues. Stated otherwise, it preserves the status quo. To do nothing to address the continuous instability and disruptions in play in major league baseball in the face of such clear language protecting the minor leagues is illogical and ignores the interests of the cities, millions of fans, and other workers in uninterrupted play.

Likewise, the agreed upon language considered by the major league owners last week to effectuate Article XXVIII of the new Basic Agreement protects the minor leagues because the language makes clear that, other than as concerns major league players, the application of the antitrust laws is not changed. Whatever the law otherwise is, it remains. Thus, under both the express language of both S. 53 and the language agreed to by player and owner negotiators, whatever the law is today with respect to the affiliated minor leagues and their relationship with the major leagues and minor league players will continue to be the law after either S. 53 or the proposed agreement is enacted.

The language of both these versions of legislation preserves the status quo to the extent that existing law would otherwise allow. These proposals do nothing to threaten the minor leagues. They deal strictly with the relationship between major league owners and major league players. To paraphrase a famous former member of this body, minor league owners "ain't got no dog in this fight."

Recently, however, I have seen correspondence in which Stan Brand, lobbyist for the minor leagues, accuses me of seeking the legislation in order to attack the ama-

teur draft. If fact, he claims that I threatened to sue to overturn the amateur draft when I was testifying some time ago on the House side. I would like to clarify the record on this issue in three respects.

First, I do not believe that Mr. Brand's comments were addressing the actual language that became part of the signed collective bargaining agreement, and certainly were not addressing the specific language we have recently agreed upon. Second, the question I was asked by a member of the House Judiciary Committee, well before the strike ended, much less the new agreement was reached, was whether I thought someone would challenge the draft. I responded that I believed someone would eventually do so, but clearly I was indicating that such a challenge would be brought under existing law. This was neither a threat nor was it any great insight on my part. Consider only that aspect of a system that requires that a young man from Cleveland must enter baseball through the draft and negotiate the terms of his employment with only one team, but permits a Cuban, who defects to the Dominican Republic, for example, to negotiate with any team. One cannot expect American young men to ignore that situation. However, third, and most important, this legislation does not affect the status of the amateur draft. If existing law protects the draft, it remains protected even after the passage of this legislation. If existing law permits a challenge to the draft today, that right is unchanged by this bill. Litigation as to the amateur draft would not be affected by the passage of S. 53 or the player-owner agreed upon proposal.

Moreover, my understanding is that the major leagues and the minor leagues recently reached an agreement on a new 10-year Professional Baseball Agreement that would guarantee 158 minor league teams in 1998, and 160 teams thereafter. In other words, the major league teams would be contractually bound to continue to support all existing minor league teams.

CONCLUSION

Let me conclude by again expressing the appreciation of all major league players to the members of this Committee for their consideration of this legislation, legislation that we strongly believe is in the interest not only of the players and owners, but also of the fans. We continue to support and are committed to seeking legislation to clarify that major league baseball players have the same rights under the antitrust laws as do other athletes. Hopefully you will shortly have before you language agreed upon by the players and owners, which we urge you to act upon favorably in the near future. And, in any event, I want the Committee to know that the Players Association strongly supports both S. 53 and the more narrow amendment pending before the committee.

Thank you.

The CHAIRMAN. Mr. Peltier, we will take your testimony.

STATEMENT OF DAN PELTIER

Mr. PELTIER. Mr. Chairman, members of the committee, my name is Dan Peltier. I had the opportunity and the pleasure to play professional baseball at all possible levels for 8 years. I played rookie ball with the Butte Copper Kings in the Pioneer League, double A with the Tulsa Drillers, triple A level with the Oklahoma City 89ers and the Phoenix Fire Birds, and I also played with the Texas Rangers and the San Francisco Giants at the major league level. I also had the opportunity to play in the independent Northern League with the St. Paul Saints. I greatly appreciate this opportunity to talk about my experiences and about the realities of baseball in the minors from the players' perspective.

Before beginning, I would like to point out that I recognize that I am one of the lucky ones. Unlike most professional players, I got the chance to play in the majors. Currently, there are approximately 4,500 active minor league players on affiliated minor league teams. Every year, the major league teams draft more than 1,200 new players, more than 1,600 players this year in 1997. So the turnover rate is very high.

As I understand it, only 1 out of every 10 players drafted even gets 1 day in the major leagues. Only 1 out of every 100 actually has a career in the majors. Moreover, when I retired, I had my college degree, a degree in accounting from the University of Notre Dame. Many players are out of the game by their mid- to late 20's, with a high school degree, a wife, children, and no marketable skills.

There are a lot of myths about playing in the minors. People think that it is the last bastion of professional sports where winning is all that matters, that economics are not as important as talent and the fun of the game. In reality, minor league baseball is a tough business where failure is the norm and success is the rare exception. Here are some basic facts.

First, the primary objective of every player in the minors is not to have a winning season, to have the best team, or to be the league champion. It is to play well enough to get off the team and play in the major leagues. It is better to have a good season for a losing team than to have average statistics for a winner. Rosters are constantly changing and there is little chance to build team chemistry or unity. Everyone in the minors—players, coaches, and managers—have one thing in common; that is, to be in the big leagues.

Second, no one gets wealthy in the minors. Most baseball players do not make in a year as much as Cal Ripken makes for one game. In fact, most minor league players would love to make what I understand you pay your entry-level staffers. When I played rookie ball, although I was under contract for a year, I made \$850 a month for 2½ months. In double A, I made \$1,350 a month, and in triple A I made \$1,850 a month for 5 months. Club house dues and tips cost roughly \$1,500 for the season, leaving me about \$7,500 before taxes. I have no idea how some of my friends who were married and had kids were able to make ends meet.

Third, a minor league baseball player has very few rights. Baseball's reserve clause is very much like the indentured servitude of the 1700's. When you first sign, you are owned by that team for basically 7 seasons. A team can buy you, sell you, send you to another country, or fire you whenever they want. They can cut you if you get hurt.

A player, on the other hand, cannot try to play for someone else. He can't try out for his home team. You have to play for the team that drafted you even if they are loaded at your position. I got drafted by the Texas Rangers after my junior year of college as an outfielder. I also played some first base. When I was ready for the majors, the Texas outfield included superstars such as Juan Gonzalez in left, Ruben Sierra in right, and Raphael Palmeiro at first. I got the chance to play when Ruben Sierra got hurt, but was sent back to the minors when he came back, even though at the time I was hitting .385.

Under the standard minor league contract, a player is required to waive all rights to appeal any action by the team in State or Federal court. You can appeal to the commissioner of baseball, except there has been no commissioner for almost 5 years. In addition, you are pushed to leave college or not to attend in the first

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place and play in the minors, even though the chances are that you will never have a career in the major leagues.

Oddly, if you are an American citizen, you have less bargaining power than kids from other countries. Players in the United States can only play for the team that drafts them. The only bargaining power that some have is to stay in college. Players from other countries, such as the Dominican Republic or Cuba, are not subject to the draft. They are free agents and can choose to play for the team that makes the best offer. Because of this fact, teams from the United States and Japan are signing players from Latin and South American countries at an increasingly young age.

Perhaps most important, there is the mind set of the minors which at best is a bit unrealistic. The longer you stay in, the fewer options you have and more desperate you seem to get. You know you are playing against a stacked deck, but in your heart you firmly believe you are different, that you are going to be the exception. One's perspective of reality at 18 tends to be a little different than one's perspective at 28 or 38.

Moreover, there is an incredible pressure to perform. You are always a day from being let go and there are hundreds of other guys ready to take your place if you have a problem. At times, the minors seem to be a series of acts of desperation.

Given these facts, I think you can understand my surprise that some want to stack the deck even further and create a new Federal law exempting the owners' actions in the minors from the antitrust laws. Quite frankly, what else do the owners need than what they have already? What are the laws they must be able to break in order to run minor league teams? How much more power do they need when bargaining with an 18-year-old kid whom they own for 7 years, and what minor league player is going to jeopardize his career by challenging the system? If you believe a player would do that, then you really don't understand the mind set of a minor league player.

Having played in an independent league, there are even some differences between these two types of minor leagues. The Northern League was very similar to double A ball in terms of pay and playing conditions, but there is a different atmosphere between the team and the fans. The primary purpose of the St. Paul Saints, which is the team that I played for, was to entertain the fans, and that commitment by the team was mirrored by the commitment from the community. Every game was a sellout. People came hours ahead of the game for tailgate parties even though there was a major league team literally only 10 miles away. The games were more fun.

Despite these observations, I would not give up my experience in playing baseball for anything. There is no greater feeling in the world than the first time you get called up to the majors, and there is also no greater low than the day that you get sent back down. Knowing what I know, I would still do it all over again. The basic fact is that you don't have to sign if you don't want to. However, this obsession with making the majors should not be a justification for the current treatment of minor league players, and I certainly hope it would not be used as an excuse to give major league and minor league owners a legal blank check.

I understand that the legislation before this committee does not address the minor leagues, however. It does not create any new rights or delete any existing ones. It is only about the relationship between the major league owners and the major league players. Consequently, it should not be changed to award the owners with even more power.

Before giving the owners an exemption for all of their activities in the minors, I hope Congress will take the time to learn more about the legal and economic realities of the minors, and not simply rely upon some of the current myths. Professional baseball owners already have more power than they need, and certainly more than they deserve.

Thank you for this opportunity and I will be happy to answer any questions.

The CHAIRMAN. Well, thank you, Mr. Peltier.

Let me make it clear that I said that Mr. Brand—I tried to meet with him yesterday. He had an appointment with our staff yesterday and I asked the staff to bring him over to the office so we could chat with him because I had chatted with some friends who felt that I should meet with Mr. Brand. He never showed up, so the staff tried to get a hold of him all day long. Finally, just to note for the record, Mr. Brand did express a willingness and desire to meet last evening, but our staff wasn't in the office at the time, but he did meet with some committee staff. So I wanted to make that clear. I wasn't aware of that at the time.

Let me also put in the record a statement by Senator Charles Grassley, and also an opening statement by Senator Jeff Sessions, as well.

[The prepared statements of Senators Grassley and Sessions follow:]

PREPARED STATEMENT OF SENATOR CHARLES E. GRASSLEY, U.S. SENATOR FROM THE
STATE OF IOWA

Mr. Chairman, I would like to add my voice to this debate to emphasize the importance of Minor League Baseball.

As everyone knows, baseball is not just a favorite American pastime—it is part of our American culture. We grew up admiring the accomplishments of our favorite players and rooting for our favorite teams. We grew up perfecting our curve balls and sliders, and wondering why our fast balls were never as fast as our heroes' fast balls. I want my grandkids and their children to enjoy the same outing to the ballpark that I did.

But baseball wouldn't be baseball without the Minor Leagues. The Major League teams would not have the pool of talent to draw from, and wouldn't have the training ground for promising players if it were not for the Minor Leagues. And, in my part of the world, the Minor Leagues fill another very important role. The Minor Leagues brings baseball to the towns and small cities. They bring baseball to my state of Iowa, and to other states that do not have Major League teams. It doesn't take a Cal Ripkin or a George Brett to make a city loyal to a baseball club. If you've never been to a Burlington Bees game or a Des Moines Cubs game, you're really missing something. And you haven't seen fan loyalty until you've gone to a Minor League game where so much of the town turns out for a game.

These are the reasons that I will continue to work to protect Minor League baseball. It is vital that any legislation passed by this Committee and by the full Senate be in the best interest of the Minor Leagues. I commend the Chairman for his efforts in this regard, and sincerely hope he continues to work with the Minor Leagues. For small town America, the Minor Leagues are baseball.

PREPARED STATEMENT OF SENATOR JEFF SESSIONS, U.S. SENATOR FROM THE STATE
OF ALABAMA

I would like to begin by thanking Senator Hatch for calling this hearing to discuss S. 53, the Curt Flood Act of 1997, which, if enacted, would repeal professional baseball's 75-year-old antitrust exemption. I commend Senator Hatch for recognizing that the legislation which we will be discussing today seeks to significantly change the basic operating structure of "America's pastime", and for giving this committee the opportunity to fully and fairly consider this issue. I would also like to thank the witnesses assembled here today for their willingness to come before this committee to help us develop a clear understanding of the potential implications that could result from any changes made to existing law.

Mr. Chairman, my home state of Alabama has a rich baseball tradition. On the collegiate level one need only look as far as this spring's College World Series to see that teams from University of Alabama and Auburn University were among the participants. A third school, the University of South Alabama, came within one game of being the third Alabama team in the College World Series, losing to eventual national champion Louisiana State University in the regional finals.

Many major league legends come from Alabama, and my hometown of Mobile has an extraordinary record. Three of the greatest homerun hitters of all time, Hank Aaron, Willie McCovey and Billy Williams were all from Mobile.

More than that, Satchel Paige, one of the game's legends, came from Mobile, and as you recall those "Miracle Mets" please note that two of their outfielders, Cleon Jones and Tommy Agee, were both Mobilians. These are just some of the many major leaguers our state has produced.

Still, although Alabama has never had a Major League team, the minor leagues have always been important. Mobilians still fondly recall "the Rifleman", Chuck Connors, who played for the old Mobile Bears. And Birmingham hosted the entire career of the most famous minor league player of all-time, the most well known athlete in the world—Michael Jordan. To most he is a Chicago Bull, but to us he is known as a Birmingham Baron.

Minor League activity continues to grow within our state. Alabama currently has three minor league teams, the Birmingham Barons, Huntsville Stars and the Mobile BayBears, which have all made tremendous contributions to the communities that support them. Alabama's affection for minor league baseball has been reflected in our teams attendance records as well, with Birmingham drawing 296,000 fans last year while Huntsville attracted 255,000 fans. The new Mobile BayBears, in this, their first full season of play, have already drawn 137,160 fans in only 31 home dates. This support for these minor league teams has made itself known through the mail and other communications that I have received in my office from individuals in the state who are concerned about this issue.

Repeal of baseball's antitrust exemption is an issue of tremendous significance to the minor leagues, and the potential impacts of this legislation on these teams should not be overlooked. The importance of minor league baseball to small towns and communities throughout America cannot be overstated. Many of these minor league teams are located in states, such as Alabama, that have never hosted a Major League franchise, and they provide their communities with unique social and economic benefits that would not otherwise exist. My interest in this hearing is to ensure that the concerns raised by these teams are fairly addressed and that the actions we take do not unfairly damage minor league baseball and the communities that support it. To this end, I look forward to hearing the testimony of the witnesses on this issue.

The CHAIRMAN. Mr. Fehr, could you share with us your views on how repealing Major League Baseball's antitrust exemption will improve labor relations between the players and the owners, and what broader benefits do you think that this might lead to?

Mr. FEHR. I think there are a couple of things. Essentially, the circumstances that when it comes to player relations at the major league level, as well as at the minor league level—the owners are organized in such a way so as to deprive players of any meaningful bargaining power on their individual contracts. Their object is to do that. The union's job is to try and negotiate a better system.

When we have a circumstance in which the antitrust laws are not there as a safety valve in the background if collective bargain-

ing breaks down, what we have is a set of circumstances in which it makes it much more likely that the owners will be interested in pushing that forward, as we have seen in the past, so that hopefully they can get to the point where they can determine without any restraint whatever the conditions are. If they know that there is a safety valve that, come what may, they can't act in a way which would otherwise be deemed to violate the Sherman Act, we think that that will temper bargaining positions, as it has in the other sports.

The CHAIRMAN. I understand that the players and the owners have agreed upon specific language as an alternative to S. 53 as currently drafted that both sides support. Can you summarize the extent to which this language substantively differs from S. 53?

Mr. FEHR. I think the principal difference is this. S. 53 is a blanket statement making it clear that the antitrust laws apply except where otherwise noted, and there are a number of exceptions to which you referred at the beginning of this hearing. The language that we are suggesting is much more narrow than that. It is an affirmative statement that the antitrust laws apply to labor relations at the major league level without making any comment whatsoever on the state of the law otherwise.

The CHAIRMAN. OK. Well, can you tell us what the advantages would be for the committee to proceed with your proposed substitute language as opposed to S. 53?

Mr. FEHR. Hopefully, what that would do is allow the committee to proceed to consider legislation in a much more simple manner with a much reduced range of issues that are there, thereby allowing for a lot less controversy and hopefully a bill which can be acted with broad support from all parties.

The CHAIRMAN. So I assume then, based upon your negotiations with the owners, that you think it is fair to say that they would support this language?

Mr. FEHR. Certainly, Randy Levine supports it. I understand that the owners have agreed to support it, also. That certainly was the intent of the collective bargaining agreement which they ratified.

The CHAIRMAN. Well, would you agree with me that the owners' support is rather significant, and that that is, as far as I can see, a momentous development?

Mr. FEHR. I think it is a very significant development. I agree with you, Senator. It indicates at long last that they are prepared to treat major league players the same way their counterparts do in other sports.

The CHAIRMAN. Well, I will put a letter in the record sent to me by Bud Selig, dated June 16, 1997. Let me just read one sentence in the letter. It says, "First, the language negotiated by representatives of the Major League Baseball Players Association and the Major League Baseball Owners was approved at the executive council meeting and the legislative committee meeting."

He does say, "Our support is only tempered by the fact that our business partner, the National Association of Professional Baseball Leagues, has concern as to whether the proposed legislation adequately protects their interests," and then mentions that "they have contacted our office."

I will put that in the record to express their concerns, and certainly we are interested in their concerns.

[The letter referred to follows:]

OFFICE OF THE COMMISSIONER,
MAJOR LEAGUE BASEBALL,
New York, NY, June 16, 1997.

Hon. ORRIN HATCH, *Chairman,*
Judiciary Committee, U.S. Senate,
Washington, DC.

DEAR CHAIRMAN: I am writing to acknowledge your June 13, 1997, letter of invitation to testify before the Senate Judiciary Committee on Tuesday, June 17, 1997, at 10:00 a.m. Unfortunately, I will be unable to attend due to a previous long-term commitment to the Boys & Girls Club of America. However, I would like to make a couple of comments with respect to our recent meetings in Philadelphia, Pennsylvania, last week.

First, the language negotiated by representatives of the Major League Baseball Players Association and the Major League Baseball Owners was approved at the Executive Council meeting and the Legislative Committee meeting. Our support is only tempered by the fact that our business partner, the National Association of Professional Baseball Leagues (NAPBL), has concern as to whether the proposed legislation adequately protects their interests. I understand that representatives of the NAPBL have contacted your office to arrange a meeting to discuss those concerns.

Second, we announced on June 12, 1997, a ten-year agreement with the Minor Leagues effective October 1, 1997. The Professional Baseball Agreement sets forth a spirit of cooperation and commitment between the Major and Minor Leagues.

Third, we are reviewing our concerns about appearing to testify given that we have been sued by one of our own member clubs in an antitrust lawsuit.

We look forward to working with you and your staff as the process moves forward.

Sincerely,

ALLAN H. SELIG,
Chairman, Major League Executive Council.

The CHAIRMAN. As I understand it, Mr. Fehr, your proposed language only addresses labor relations at the major league level, is that correct?

Mr. FEHR. That is correct.

The CHAIRMAN. Does the proposed legislation give anyone a right to challenge the minor league draft or reserve clause?

Mr. FEHR. In my view, this is carefully drafted so that if this legislation passes, it would be irrelevant to considerations about the status of the draft or the minor league reserve clause.

The CHAIRMAN. Does it address the minor leagues at all?

Mr. FEHR. It only addressed it to say that whatever the status of the law is, this doesn't change it. Otherwise, it does not.

The CHAIRMAN. Well, now, do you believe that the minor league draft or reserve clause under current law are exempt from the anti-trust laws?

Mr. FEHR. That is an interesting question. It has never been tested. I don't know what—

The CHAIRMAN. Do you think they should be?

Mr. FEHR. Personally, do I think they should be?

The CHAIRMAN. Yes.

Mr. FEHR. No, I don't think they should be.

The CHAIRMAN. Why not?

Mr. FEHR. Major League Baseball operating the amateur draft—and make no mistake, it is operated by Major League Baseball, not by the minor leagues; as a matter of fact, all the minor league contracts are now signed by the major league clubs; they are not even signed by the minor league clubs—effectively prevents any poten-

tial baseball player from bargaining with more than one potential employer.

It is not even like the Federal Government where you can apply to a number of different agencies in a number of different locations. You have one choice, and one choice only. We think that is fundamentally discriminatory. We don't know of any other place in America in which we tolerate it. The amateur draft came in in the mid-1960's. I know of no case in which it has been examined under the antitrust laws. I can make the arguments as to how that would come out either way. For purposes of this legislation, though, I do want to emphasize that this legislation would not affect that one way or another.

The CHAIRMAN. OK. Now, Mr. Peltier, let me just take a second with you and then I will turn to Senator DeWine. You have given us some very helpful insight into life in the minor leagues and this will, I am sure, prove helpful as we consider further legislation.

As I have stated earlier, our pending bill does not in any way affect the applicability of the antitrust laws to the minor leagues and, as I understand it, nor does the proposal agreed upon by the owners and the players, as articulated by Mr. Fehr. But I suspect that this is an issue that at some point is going to surface, and I take it from your testimony that you would advise against changing the bill to insulate the minor league system from the antitrust laws. Am I right in that?

Mr. PELTIER. That is correct.

The CHAIRMAN. Do you know of any minor league player or agent who has challenged the legality of the minor league system?

Mr. PELTIER. Not off the top of my head, no, I don't.

The CHAIRMAN. Why do you think that that hasn't occurred, why no player has actually challenged this system?

Mr. PELTIER. Well, I think, you know, what you have to realize here is that minor league players that aren't part of the 40-man roster which is protected by the Major League Players Association basically have no rights in terms of voicing their opinion. You know, the thing that you have to remember here is that the urgency to get from a minor league level to a big-league level necessitates the fact that you have to first perform well. And, second, you have to, you know, perform in the bounds of what the major league team wants you to perform in.

The CHAIRMAN. So, don't cause any trouble, is what you are saying?

Mr. PELTIER. Exactly, exactly, you know, and that is a big thing. You know, you look at some of the players today, you know, and you can cite numerous cases where they do cause trouble, but—

The CHAIRMAN. And even though they are great players, they never make it to the majors?

Mr. PELTIER. Yes, absolutely, absolutely, and one of the things that you have to look at is, as I mentioned in my testimony, you have to be in the right place at the right time. That not only means talentwise, but also your personality has to fit that of the big-league club that you are trying to make. And if that is not a perfect fit, then, you know, you end up with the short side of the stick.

The CHAIRMAN. Well, assume for the moment that the antitrust laws ultimately would be applied to the minor leagues either by the

courts or the Congress. Were this to happen, do you believe that minor league baseball would be destroyed, as some have suggested?

Mr. PELTIER. No, absolutely not. You know, one of the things that I don't think people understand is that minor league owners aren't the ones that pay the salaries for the minor league players. As Don sort of alluded to, the fact that when you sign a contract, you are signing a contract of the major league parent club—because of that, you know, I think that minor league owners tend to feel that, you know, they are not operating on fair grounds. But they have to realize that what they get out of their investment in minor league baseball is not something that is construed as big-league baseball, major league baseball. It is an entirely different market.

The CHAIRMAN. Well, you are no longer playing professional baseball, right?

Mr. PELTIER. Correct.

The CHAIRMAN. Well, we have tried to have a current minor league player come and testify, but we couldn't get anybody to do it. Can you tell us any reason why?

Mr. PELTIER. Well, I think that speaks volumes in itself that, you know, I think guys are afraid to come out here and speak against, you know, the people that are deciding their fate.

The CHAIRMAN. In other words, they don't want to rock the boat?

Mr. PELTIER. Exactly, exactly. They don't want to rock the boat.

The CHAIRMAN. Is there a difference for the players and the fans between the affiliated minor leagues and the independent league?

Mr. PELTIER. Yes, absolutely. You know, one of the things that I had the opportunity to do was to play for the St. Paul Saints in 1995 because I didn't cross the line and be a replacement player, and what I noticed was that their whole existence is based on the fact that the fans take part, you know, in the game itself. The way that they have organized their organization was to make it more of a family atmosphere and have the fans be part of the game.

As a result, you know, I saw things that I haven't seen since I was a student at Notre Dame. The people were tailgating before games on weekdays at 4:30 in the afternoon. We would have a packed house. People really enjoyed going to the game not only because of the product that was on the field, but because of the entertainment that they witnessed.

The CHAIRMAN. Well, Mr. Peltier, based on your experiences as a minor league player, can you tell us what happens to a minor league player if he has a career-shortening injury, such as torn ligaments or a torn rotator cuff or a knee or a shoulder that can't be fully repaired? Can he be cut after sustaining the injury?

Mr. PELTIER. Yes, he can. What the teams are bound to do is pay for their medical bills, you know, in the event that the injury occurred while he was playing for that team. Beyond that, there is no legal responsibility for the team to continue to pay him and give him the opportunity to make it to the major leagues. You know, there again, that ties in with the fact that minor league players really do have no rights and they are not bound by—

The CHAIRMAN. So, basically, he is dead as far as baseball is concerned if he has a career-shortening injury?

Mr. PELTIER. Right, and that is a very real possibility.

The CHAIRMAN. And there is no real help for him?

Mr. PELTIER. No, and that is what separates the major leagues from the minor leagues. Don Fehr and the Major League Players Association represent the players such that they are treated fairly, and the minor leagues really have no governing body to that extent.

The CHAIRMAN. I see. I understand that you were let go by the Texas Rangers after you refused to cross the picket line and be a replacement player during the labor dispute in 1995.

Mr. PELTIER. That is correct.

The CHAIRMAN. Could you please explain what happened, why you refused to play?

Mr. PELTIER. Well, the reason why I refused to play is that I had just been part of the Major League Players Association and felt a responsibility to support the union. I realized that had I crossed the line, I, in essence, would be admitting to myself that I don't think that I could make it back to the major leagues on my own volition. And, you know, as a result, I felt that it was an easy decision for me to make in terms of not becoming a replacement player because of the fact that I did support the union and wanted to get back to the big leagues, you know, on my own.

The CHAIRMAN. Well, were any threats made to you?

Mr. PELTIER. Well, one of the things that happened in spring training was they had all of the players that weren't on the 40-man roster at the time—and a lot of the teams did this; some of the teams didn't participate, such as the Baltimore Orioles. But at the time when I was with the Texas Rangers, they had everybody come down early from minor league camp in February and play together. There were a lot of players there on the field and, you know, we had normal workouts for, you know, approximately 3 weeks or a month—actually, around 3 weeks.

Then our general manager, who was Doug Melvin, called us all on the field, with the exception of around 10 young prospects who they felt would make it to the big leagues eventually on their own. He called everybody over onto this one field and said, you know, verbatim, "Either you stay and play or you go home. We are not going to pay for your hotel. We are not going to pay for your ride home. We want you to be a replacement player because this is where the game is right now." So, around 10 of us got up and left.

You know, it was clearly evident as to what they were trying to do, you know, just given the fact that they had these 10 prospects, these 10 young prospects, separated from the mass so that they wouldn't be affected by this and had to make that decision because I think in their minds they knew that this would definitely have some repercussions on the players who did decide to cross.

The CHAIRMAN. Well, do you think that most players who are drafted enter the minor leagues fully understanding what they are getting into and have been given an accurate representation of their chances of making the majors?

Mr. PELTIER. Well, you know, I think that as a scout or as an organization as a whole, they try to paint a rosy picture and try to make it sound as if everybody has a real good chance to make it to the major leagues. In reality, that is not the case, as is evident by the numbers that I had mentioned. But, you know, I think that

they do try to make it—baseball is different from other sports, too. Baseball does not use college as their minor leagues, whereas basketball and football basically do. So right from the start, there is a pressure to enter the minor league level at a younger age so that they can—you know, they can bring you along in their process as they would have it. So this is a difference from these sports.

The CHAIRMAN. Well, could you just describe maybe in a little more detail the kind of pressure placed on high school and college students to leave school and play minor league baseball by the team that drafts them?

Mr. PELTIER. Well, I think that the pressure exists in the fact—you know, I can speak from my experience where, as a junior, in going through the negotiating process once I was drafted, obviously their desire was to have me sign and play professional ball right away at the youngest possible age, OK, for the least amount of money. So they used their tactics to try to get me to sign for as little amount of money as possible.

Now, my feeling was that because I was a junior, I had an opportunity to play for Team USA. I had an opportunity to finish my degree on time. I felt it was important for me to make sure that playing professional baseball at that time was going to be the best possible scenario for me because I was putting a lot at stake, you know, and the methods that they used to try to make me sign at an earlier time for a lesser amount of money were such that the scout came and said, you weren't picked until the 65th pick and you want such and such for your signing.

So then my response was, so what you are saying is that you view me as a number and not as a person. And, in turn, he said, no, that is not the case, and then he said something as if, if you don't sign, I am going to lose my job. Now I am a 20-year-old kid and he is trying to use all these tactics to try to get me to sign. Then there were comments made in my local newspaper as to I would be crazy if I didn't sign, comments made by a scout who was a national scout for the Rangers at that time, you know, therefore putting more pressure on me by my peers and my family and everyone in the area.

So, you know, there are definitely tactics that are used to try to force kids to sign at a younger age. You know, they are trying to do their job and stay within their budget, but, you know, only I think to put a feather in their cap if they can sign the diamonds in the rough.

The CHAIRMAN. Well, thank you. I think both of your testimonies have been very interesting here today. Again, I would note that I would have preferred to have had representatives of the minor and major leagues here to respond and testify. It is unfortunate for them that they aren't here represented, but we certainly did everything in our power to try and get them here.

So I wish we had some of their responses to some of this, but I am not without some understanding of this myself. Having been born and raised in Pittsburgh, PA, and watching the Pirates and having been a Pirate fan all those years, I saw a lot of things happen that concerned me.

Senator Specter would like to make a statement and then ask a question or two of you, Mr. Fehr, and Senator DeWine has graciously agreed to allow that to happen, and I certainly agree.
 Senator Specter.

**STATEMENT OF SENATOR ARLEN SPECTER, A U.S. SENATOR
 FROM THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you very much, Mr. Chairman, and thank you, Senator DeWine, for yielding to me for a few moments.

The issue of the antitrust exemption has been before this committee repeatedly during my tenure in the Senate, and we are searching for a way that there can be fairness to all sides and baseball can be preserved as the great American pastime. My own basic view is that the antitrust laws ought to apply to everybody, and I have stayed with the baseball antitrust exemption really because of an effort to preserve the small-market teams, one of which is Pittsburgh. The Pirates have stayed in Pittsburgh, at least up to the present time, and they are doing very, very well this season with a very small budget, but their future is obviously precarious, as are other small-market teams.

It has been my hope that in the controversy around baseball that somehow the participants, the owners and the players, would come to some sort of an agreement or understanding to preserve the game. I think that necessarily involves revenue-sharing and salary caps, or perhaps I shouldn't say "necessarily." Perhaps it can be preserved without revenue-sharing and salary caps, but I do not know how it can be done without those two features, and perhaps more.

The Congress of the United States is not in a very good position to tell people what to do about anything, and we like, in our free enterprise society, for people to make their own judgments and the market to prevail. However, baseball does have this great exemption, which is historical, but they have it, and it has seemed to me that the Congress might be in the position to exercise some leverage on the owners and on the players to work out some arrangement where the game could be preserved.

I personally still resent the moving of the Dodgers from Brooklyn in 1958, and the Giants, and that fabulous baseball series on public television was on again last night and talked about that again. I think that there are major problems with the move of the football franchises around, like the Cleveland Browns moving to Baltimore. That is slightly different, but it is still in the same line. That draws a response from Senator DeWine.

A few years ago, the Eagles were on their way to Phoenix and that was stopped, and we had some really tough hearings here in 1982 with Pete Rozelle and Al Davis at the witness table when we were trying to find some sense out of the move of the Raiders.

I read in the press last week, and I have yet to confirm the accuracy, that the "baseball commissioner," wants a new stadium in Philadelphia for the Phils. Well, I didn't know baseball had a commissioner until I read it in the paper. I thought that they had an acting commissioner, and there is a big difference between a commissioner and an acting commissioner. The paper said that permission had been given for the Minnesota team to look for new owner-

ship and a possible move, and that might be in the offing for the Phils.

I have a lot of admiration for Bill Giles and the Phils organization, but I am not too anxious to see the taxpayers pick up the big tab on a new stadium. Our very distinguished Governor, Tom Ridge, is looking at that with a commission, and Pittsburgh is involved and so are the Eagles and so are the Steelers, and who knows what comes next?

However, it seems to me that in a sport which is as lucrative as baseball, where there is as much money as baseball has, that someone there ought to be making arrangements where baseball would pay for its own stadiums. I think that the kind of salaries commanded in a free enterprise system is wonderful, although we took an initial step a few years back in denying deductibility for athletes' salaries over \$1 million. We could do things like that under our taxing power which would have a very profound effect.

I am not in favor of that, necessarily, but there is just a search here as to what can be done to stabilize the game, something that I have worked on for a long time. I recently retained special counsel in the field, Gilbert Stein, who is here today—he was one of my top deputies when I was district attorney, and later president of the National Hockey League, and very, very well-informed on sports—to try to take a fresh look to see if we can be of some help.

So the question I have, Mr. Fehr, after that relatively brief statement, is what suggestion would you have, if any, as to some overarching principles that we might bring to baseball so that—when I turn on the radio and listen to the Phillies, I can't tell who is at bat because the players have moved around so much. I was at the Phillies game on Sunday, a beautiful day and a big crowd, and the Blue Jays were in town. We hadn't seen the Blue Jays since we lost the Series to them in 1993.

What could be done to stabilize the game and perhaps provide revenue-sharing, perhaps provide salary caps or, if those two factors are not to be done, to stabilize so that the small-market teams stay and there is some continuity? This moves over into television where we do have some greater authority with the Braves and their television network and Ted Turner's big question, who wants Rupert Murdoch to buy the Dodgers, and what that implies.

It is a very, very tangled web, and you have been in this a long time, Mr. Fehr, and you are a very astute lawyer and pragmatist and have a lot of experience. That is not a very concise question. I feel a little like some of my colleagues, but what suggestions would you have—to make it specific, what suggestions would you have to stabilize the game?

Mr. FEHR. I will just open by noting that some people are hesitant to ask me open-ended questions, but let me try and respond as concisely as I can. You have raised a number of issues.

I remember those hearings in 1982, to which you referred. I am reasonably certain that I testified in one segment of them, and my own views on generalized number and location and relocation and franchise issues and funding of stadiums, which is directly related to that, are well-documented in testimony going back at regular intervals over the 15 years. I will only respond to that issue by saying that so long as we permit effective cartel-like organizations

that can control the number and location of franchises, it is not unreasonable to expect that they will act like cartels and utilize whatever leverage they have. The only way that is going to change is if you have teams competing for cities, rather than the other way around.

Second, and much more directly related to the focus of your question, the issues swirling around small-market clubs were in large part responsible for the dispute that we had with the owners. It is not, I think, an oversimplification to suggest that, fundamentally, you had revenue-sharing rules in Major League Baseball which were outdated by decades that the small-market clubs felt worked to their peculiar disadvantage.

There was a generalized desire to reach a conclusion by which they would be helped, but the question came down, where would the help come. Our view was that how money is shared among management is, if not anything else, perhaps the most traditional management function there is. Ordinarily, when people come up with a joint venture, they tend to write the rules as to how the money flows as between the joint venture members, and as long as they didn't rewrite those rules in a way which effectively destroyed competition for players, they were going to be able to do that.

The owners as a group didn't want to do that because the large-market owners' initial position in the bargaining, as is well-documented, was essentially that they would share, but only if player salaries were reduced by amounts greater than the amount they would have to share. Then they would do so. I would just refer you to a congressional Research Service report in January 1995 which documents what the positions of the parties were.

Having said that preliminarily—and I indicated in my prior testimony before you were able to come into the hearing that the new collective bargaining agreement we reached last November, which was finally drafted and signed in March, has quite a number of new provisions in it. Principal among those, and to which I did not earlier refer, are provisions relating to increased revenue-sharing and certain restrictions on the payments of players.

I will be glad to provide you with whatever level of detail you want on this. Essentially, it comes down to the following. Over the next 5 years, the level of revenue-sharing from large- to small-market clubs—or rather small-income clubs—it is defined in terms of income rather than market size—will go very substantially in phases. In the initial years, there are certain taxes that would apply to certain clubs if they spend over a certain amount on players. Those eventually go away as the revenue-sharing becomes much more substantial.

In addition to that, in a gesture of what I consider, at least, to be consummate good faith in an effort to rebuild the game, the players have agreed on their own to kick into revenue-sharing in 1998 and 1999 exactly 2.2 percent of what their total salaries are, which we expect to be several million north of \$40 million. Virtually all of that will go to small-market clubs.

In the end, baseball has to have a system which provides adequate resources to the various teams. The definition of what is adequate and the determination as to who pays that bill were the primary subjects of our collective bargaining negotiation and, if the

provisions we put in place are successful, hopefully will pave the way for the future. If not, we will have that issue again the next time.

Senator SPECTER. Thank you very much, Mr. Fehr, for that answer, and we will be pursuing it. I appreciate your allowing me the deference here. Thank you very much, Senator DeWine and Mr. Chairman.

The CHAIRMAN. Senator Leahy, our ranking member.

Senator LEAHY. Thank you very much, Mr. Chairman. I apologize for being late, but I have been tied up with the land mine issue on the floor, and I guess you have been discussing the land mines of this whole baseball situation.

You know, Senator Hatch and I as sponsors of this legislation have shown an awful lot of patience in affording the Major League Baseball owners some opportunity to implement the agreement they reached with the Major League Baseball Players Association 8 months ago and to support legislation to end what I believe is baseball's unjustified exemption from Federal antitrust laws.

I am sorry that Senator Hatch's efforts have been taken for granted. I regret that the baseball team owners have responded to his courtesies by refusing to appear here today. Frankly, the baseball owners are still in hiding in refusing to appear before the U.S. Senate. Mr. Selig is the seemingly permanent acting commissioner. He has been commissioner longer than most I have known.

If he were here, we could ask him what about the unsettling authorization of the Minnesota Twins to negotiate to abandon the team's fans in the Twin Cities? What about questions surrounding demands for publicly-financed facilities in Seattle, Milwaukee, and a number of other cities? We might ask him what about the Yankees' lawsuit against the other major league baseball teams which implicates the applicability of Federal antitrust laws to the business of Major League Baseball?

We might ask him what is going on with the search for a strong, independent baseball commissioner? It is sort of like "Waiting for Godot" around here as we wait for a new baseball commissioner. I am 57 years old. I would like to live long enough—and I come from a family of long-lived people—I would like to live long enough to see one. Then we would like to ask him questions about realignment of teams among baseball's division, or the question of revenue-sharing with small-market teams.

Mr. Chairman, I believe you have the patience of Job. Actually, you have to to be chairman of this committee.

The CHAIRMAN. I am glad you recognize that. [Laughter.]

Senator LEAHY. I want to give you credit, but not so much credit that it hurts you back home.

There is strong public interest in baseball. In Vermont when I was growing up, you were automatically, or you weren't allowed to live in the State, a Red Sox fan. But now, of course, loyalties are split among teams, among various sports. We have a successful minor league team, the Vermont Expos, the champions of the New York-Penn League. They begin their new season later this week. We have a lot of businesses and jobs that depend on baseball, and we have baseball fans.

I just worry that the public is being short-changed here, Mr. Chairman. The first legislative day of this session, you and I and Senator Thurmond and Senator Moynihan cosponsored a consensus antitrust repeal measure. Instead of prompt action and agreement, we have been stalled by these people for 6 months.

I would just ask this one question of Don Fehr, who is here. You remember when some Senators argued over the past several years that we should not proceed to repeal baseball's antitrust exemption during a labor-management dispute. Well, now, you have a 5-year contract. That contract included provision for the players and owners to lobby for the antitrust laws to apply to labor relations in Major League Baseball. Wouldn't this be the perfect time to pass the legislation to repeal the antitrust exemption?

Mr. FEHR. As I indicated, Senator, before you came in, my views on the exemption generally, what the effect has been, and how the law should be in a perfect world are well-known. I have testified to that many times and I don't have occasion to change those views at all today. Simply put, the antitrust laws ought to apply universally, and I certainly don't want to presume to suggest to this committee or to the Senate or the Congress as a whole that with respect to matters other than those covered by our agreement with the owners that they should refrain from considering whatever measures that you deem appropriate, especially given all that you have learned.

I can say for my own part that after these many years of difficulty and trial and tribulation, we have reached an agreement with the owners in the specific area which applies directly to my membership and people that I represent, and that is the measure that we hope that you will act on favorably and act on quickly. As has been the case in the past, I will be glad to provide you or any other member of the committee or the Senate any other assistance with respect to other questions that you might find helpful.

Senator LEAHY. I appreciate that.

I see Mr. Peltier here. I commend him for his courage in being here because he may want to go back and play at this level. I think the Blue Jays released Ruben Sierra this week. You look in pretty good shape. They may be looking for somebody who used to hit .385.

Mr. PELTIER. Hopefully, for more than a couple weeks.

Senator LEAHY. Well, I think you would do OK. Certainly, you are better prepared to do that than anybody on this panel, with the exception of Senator Thurmond. He has got his new baseball bat from Chairman Hatch.

Let me ask you one question, and this doesn't necessarily have anything to do with this particular hearing, but I am just curious to hear your thoughts. We have the tremendous growth and success of women's sports following the college programs through title IX. We have women's Olympic team victories, girls and young women getting involved in soccer and baseball and basketball and other sports. We have the Silver Bullets. We have stories about women pitching in minor leagues.

Do you see a time when women will be playing or coaching or umpiring in the major leagues?

Mr. PELTIER. Well, you know, physically that may be the case some day, but I think that the way that the minor leagues or the major leagues exist today, I think it would be difficult, you know, in the sense that the way that things have been established would have to be changed to accommodate those needs because, obviously, there would be different needs for club houses or showering facilities or things of that nature.

You know, if you are asking me a question of talent, you know, who knows what could happen in the future? But I think that—

Senator LEAHY. It is more a question of talent. I mean, all the other things can be worked out.

Mr. PELTIER. Yes. I think in the future, I don't see why, you know, you couldn't say if there is a woman that throws 95 miles per hour and can get batters out, then she would be as deserving as anyone else.

Senator LEAHY. Mr. Chairman, I commend you for doing this, and again I commend your patience. You are truly a Latter Day Saint.

The CHAIRMAN. Well, it is better than being a latter day liberal, is all I can say.

Senator LEAHY. Oh, come now. Some of them are saints, too.

The CHAIRMAN. Let me turn to the chairman of our Antitrust Subcommittee, who has been very patient here, and I also want to say that Senator DeWine has been a leader in this area, as well, and we are looking forward to his work with us on this matter.

So, Senator DeWine, we will turn to you and I am sorry it has taken so long to get to you.

Senator DEWINE. Thank you, Mr. Chairman. Let me first thank you for holding the hearing and congratulate you for introduction of the bill. I supported a similar bill, as you know, in the last Congress. Quite frankly, it is hard to come up with any logical or rational basis why baseball should stand alone with the antitrust exemption, and for that reason I supported its abolition in the last Congress.

Let me turn to the issue of the minor leagues, which I think is a troubling issue. First, let me say, Mr. Chairman, I am also sorry that Mr. Brand is not here today. We have in the State of Ohio three minor league teams. We plan to have a fourth within the next year or two in Dayton. We obviously have two major league teams in Ohio. So this issue holds more than academic interest for me.

I have listened over the last few months to repeated statements about what this bill or similar bills would do in regard to the minor leagues, and people have told me that even though this bill is very specific and says it will not impact the minor leagues, there still have been a lot of comments that have been made about the fact that it will have unintended consequences in regard to the minor leagues. So I am sorry that he is not here today, Mr. Chairman, to talk about it. I think it is very difficult, frankly, to approach this issue without a representative of the minor leagues here.

The CHAIRMAN. Well, I do, too.

Senator DEWINE. I just think it is just a real shame. This is not a new issue. This is not something that they have not had the opportunity to think about for a long, long time, and I don't know

how we really approach this issue without a thorough discussion about the minor leagues. I am going to have a couple of questions for our witnesses in regard to that.

Let me also state, Mr. Chairman, that I think it is a shame that the major leagues are not represented here. Bud Selig is not here; the acting commissioner is not here. Again, I think it makes it difficult to address this issue in his absence.

The CHAIRMAN. Will the Senator yield on that point?

Senator DEWINE. I certainly will, and I understand you have been very plain, Mr. Chairman, that you extended the invitation and these issues have been out there in the open for a long, long time. There is nothing new, but I think that for neither of them to be here creates a problem for us.

The CHAIRMAN. If the Senator would yield, I think it is a problem. But on the other hand, what we are trying to do is resolve the major league problems at this point and leave the minor leagues alone. Now, if, in the future, we find that there is a disadvantage or some major problem, we can work on that.

Senator DEWINE. Mr. Chairman, I thoroughly understand that, and I don't quarrel with that and I don't disagree with you. I don't think you are wrong.

The CHAIRMAN. No. I know you don't.

Senator DEWINE. But we are still left, and I am still left with statements that have been made by minor league teams, statements that have been made by representatives of the minor leagues, that even this bill leaves this open and that there are going to be unintended consequences. I think it is very difficult for me as a member of the Senate to deal with it. It is not the chairman's fault, but when people say there is going to be a problem and then they don't come in and testify, I think that is just a real problem.

The CHAIRMAN. I agree. If the Senator would just yield again, I understand that, but again I want to just resolve this problem. I was hopeful that Mr. Brand would be here with suggestions that he would like to have.

Senator DEWINE. Well, I have also, Mr. Chairman, as you know, asked for specific suggestions from Mr. Brand and we have not been able to get any specific suggestions.

The CHAIRMAN. I know. We are in agreement. What I want to do is turn the rest of the hearing over to you as the chairman of the Antitrust Subcommittee because I need to get to Finance. That is what I am trying to do.

Senator DEWINE. I will continue, then, Mr. Chairman.

The CHAIRMAN. If you will, and if you will forgive me for leaving. I want to thank you both for coming. I think your testimony has been very accurate, very good, and very helpful to the committee. We will just move ahead and see what we can do here. I want to be fair to all people here, but it seems to me the major league problem is solved. There should be no griping about that.

With the minor leagues, we are happy to work with Mr. Brand. I just don't want it to tie up the solution to the major league problems. And if there is an attempt to do that, then I have to say I am going to be pretty irritated because I am willing to work to try and resolve those problems in the future. But this is something I

would like to get done today, since the major league owners and players have basically agreed. It seems to me there is no reason not to at least pursue and complete that aspect of this whole set of problems, and then to the extent that we have other problems with the minors, we will be happy to work with them, and even hold hearings and do other things that may be helpful there. But right now, I would like to get this problem solved.

Thank you, and if you don't mind finishing, I would appreciate it.

Senator DEWINE. Thank you, Mr. Chairman. I will be more than happy to.

The CHAIRMAN. Good to see you.

Mr. FEHR. Thank you, Mr. Chairman.

Senator DEWINE [presiding]. Let me make a couple more statements and then I will turn to questions. As I was saying, I think it is a shame that the acting commissioner of baseball is not here. You know, some people may say, well, what in the world does the U.S. Senate care about whether there is an acting commissioner or a permanent commissioner, and what should our involvement be? I think it is obvious that when we deal with antitrust, we have to be directly involved. We have to be involved in resolving this issue.

I think, also, though, it needs to be pointed out that the public has some interest in what goes on in baseball, not just as fans, but we are seeing hundreds of millions of dollars in taxpayers' money put directly into stadiums today, into ballparks today. So it is not out of line for Congress to ask questions about the health of organized baseball. I don't think it is out of line for any member of the public or a Senator or a Representative to wonder, as we continue to, why in the world the owners do not want a permanent commissioner, why they do not want a powerful commissioner, why they do not want a commissioner with any power at all.

I think the answer is clear. The answer simply has to be that they don't want anybody with that kind of authority. They want to be able to control whoever the commissioner is. They do not want, apparently, or think it is in the best interests of baseball to have a commissioner who has the moral authority of an independent commissioner and someone who can make decisions in the best interests of baseball.

When Mr. Selig was testifying in front of this committee several years ago, he told us that the commissioner would be imminent, would be very shortly appointed, and we are still here today several years later and obviously there is no commissioner. Now, I am not going to spend a lot of time today talking about the problems that that has created, but I think it has created a great deal of problems with the public perception of organized baseball.

Let me, if I could, turn to the issue of the minor leagues. Mr. Peltier, you have raised some very interesting issues in regard to that, and I think for me, as I was telling the chairman, it really is two questions or two issues, and they are separate and distinct in a sense. First, what are the unintended consequences going to be of this piece of legislation, where we state that it is going to have no consequences, but there is a nagging feeling that it may.

Second, maybe the bigger question, is what you have brought out as to whether or not we should look at the whole antitrust issue

in regard to minor league baseball. I think that is probably something that this committee should look at. We have a merger here of labor law and antitrust law and a few other things, but it seems to me that one of the kind of interesting things that we may end up with is that we pass this piece of legislation and we may have ended the antitrust exemption for the major leagues and we may still have an antitrust exemption for the minor leagues, which I find to be a little odd, that in all of professional sports we may have one small class of individuals, and that would be minor league players, who now we have exempted from the antitrust laws.

I understand some of the practical reasons that are given for doing that, but I just wonder as a matter of public policy whether that is good or not. But I think those are issues probably for another day when we have the opportunity to have additional witnesses on this subject.

Mr. FEHR, educate me a little bit in regard to your union. My understanding is that a professional baseball team has a roster of 25, but they have contracts for, what, 40? You have 40 major league contracts on a team. Is that how that works?

Mr. FEHR. Yes. The system can be easily described in the following way. Each major league club can hold title to up to 40 player contracts in its own name, and those are major league contracts. We negotiate the form of those, and so on. They then can hold a virtually unlimited number, subject to the number of minor league teams they have, of minor league contracts, and those contracts are now held in the name of the major league team, not the minor league team.

Senator DEWINE. But you would represent only the 40, is that right?

Mr. FEHR. Yes, and there are certain—

Senator DEWINE. The 40 who would have signed a "major league contract?"

Mr. FEHR. Yes, although there are certain terms and conditions of employment when they are assigned to the minor leagues outside the bargaining unit for which we do not represent them.

Senator DEWINE. But, in general, it is basically 40 people?

Mr. FEHR. Right.

Senator DEWINE. So if I go to a Toledo Mud Hens game and look out on the field, there may be some players out there who have a major league contract, correct?

Mr. FEHR. Yes.

Senator DEWINE. Some of them may have a minor league contract. The rest of them would have a minor league contract?

Mr. FEHR. Yes.

Senator DEWINE. But they are all contracts with the parent club. Would that be correct?

Mr. FEHR. That is the case now, yes.

Senator DEWINE. That is the case. So when I look out on the field at the Akron Arrows, as I did the other day with my son, when we watched a game—if I look at some of the players, some of them you may represent and some of them you may not represent?

Mr. FEHR. That is correct.

Mr. PELTIER. If I may say something?

Senator DEWINE. Yes, jump in. Please, jump right in.

Mr. PELTIER. One of the things, though, is that the players that are on the 40-man roster that are playing in the minor leagues are not bound by the terms of the major league minimum salary. So even though the minor league players that are on the 40-man that are playing in the minor leagues are represented by the Players Association, some of the rules don't apply.

Senator DEWINE. When does the minimum salary kick in? Educate me further on that.

Mr. PELTIER. As soon as they make the major league team on the active 25-man roster.

Senator DEWINE. So when you were brought up, though—and you played, what, several weeks? Is that what I heard you say?

Mr. PELTIER. When I first got called up, yes.

Senator DEWINE. OK.

Mr. PELTIER. So my salary was prorated each day that I was up there based on the minimum salary.

Senator DEWINE. So once you were called up—let us say the Reds call up somebody from Indianapolis, for example. Once they walked on the field, that is a day. That is prorated, then. Is that how that works?

Mr. PELTIER. Correct, and then when they get sent back down, their pay scale goes up, as well, to a minor league minimum.

Mr. FEHR. Let me perhaps explain it in a slightly different way. There is a minimum salary which applies to play at the major league level, meaning each day that you are eligible to participate in a major league game, you are on that particular roster. If you are on the 40-man roster, but not assigned to the major league team—you are assigned optionally to the minor leagues—you have what is known as a split contract as a generalized term, a minor league contract and a major league contract. If it is your second year or later on a major league contract, there is a separate, much lower minimum salary that applies to your play in the minor leagues. In your first year on a 40-man roster, there isn't.

Senator DEWINE. That gives me a general feel without taking it further. But that has been good. I thank you both very much.

Mr. Fehr, one of the allegations that has been made, or statements that I have heard as I have talked to people about the agreement that you have reached, and subsequently this bill, is that there will be a suit brought challenging the reserve clause in the minor leagues and that your Players Association will make an attempt to represent the minor league players.

Now, I am not saying whether that is good or bad. I am just curious to know maybe what some of the unintended consequences might be of this legislation. So I guess my question is, what is your interest in the minor league players? There are an awful lot of them out there.

Mr. FEHR. Yes, and a number of them will eventually become major league players; by definition, the best of them, although, you know, there are some players that fall through the cracks because of the system.

Senator DEWINE. Right.

Mr. FEHR. The short answer is this. I have long believed and still believe that, sooner or later, some player or players will challenge the amateur draft because it operates in an unfair and discriminatory manner and deprives opportunity that everyone else takes for granted to, in essence, look for a better job, try and apply somewhere where your talents may match what the need of the employer is, and there are a lot of specific examples of that.

Whether we would help or support any such legislation would depend on how the Players Association executive board viewed it at the time. I would tell you that we never have and there are no such suggestions under consideration or have been. For purposes of this legislation, however, I think both S. 53 and the suggested language that we have negotiated with the major league owners—there is one thing that ought to be made clear. We do not have an agreement on the amateur draft or anything like that, but what we have agreed specifically is that we would ask the Congress to consider legislation that would solve the major league problem and leave the application of the antitrust laws otherwise, including to the minor leagues and the amateur draft, to whatever they would otherwise be, so that this legislation would not affect that judgment at all. As a matter of fact, it would be irrelevant to consideration.

Senator DEWINE. Well, do you find it a little strange that we would be in the situation—I mean, we all know the historical background of the antitrust exemption for organized baseball. Then we are coming along here—and I am not saying I am not going to support this. I think this is the logical thing to do, but isn't there something a little ironic about going in and saying, well, we are going to remove the exemption for major league baseball, but minor league baseball—we are going to almost carve out an exception within an exception?

Mr. FEHR. I think the reason that I was—

Senator DEWINE. I understand as a practical matter, that is why it is happening. I understand that. I get that.

Mr. FEHR. As a matter of public policy, it has always been more than difficult, virtually impossible, for me to rationalize the baseball exemption to the extent it applies other than by reason of historical accident for whatever that has been. I think the short answer is why the narrow bill that we are supporting—it is that, A, those are the clients that I represent. B, that is what we were able to get agreement on, and collective bargaining and politics both deal with the possible. It is very difficult for me to make a logical distinction as to why should have one and the other. I don't think one can reasonably be made.

Senator DEWINE. Well, let me ask both of you a question, and I am not proposing that we do this, but I am again just trying to get some facts out here, or at least get some opinions out here from the two of you anyway.

What happens if tomorrow, overnight, the whole antitrust exemption was gone for all of baseball? What happens to the minor leagues? I mean, the statement is made by many of the minor league owners that if that occurs, the minor leagues as we know them will be gone, that they will not exist, that we will not have as many teams as we have, that communities that have invested

money in teams and have now built some ballparks and stadiums with public funds will totally change. The numbers will change.

Mr. FEHR. The reason I was shaking my head a little bit is I get wistful sometimes. I have heard such statements, too. Whenever we have made inquiry, what is the mechanism by which these bad results will become accomplished, there is no mechanism which is ever articulated. I recall Bowie Kuhn, who was then commissioner, testifying in 1976 in the original free agency proceedings that the American League would collapse and the National League would be down to six teams if we had free agency in Major League Baseball. Instead, what has happened is you have had the greatest period of prosperity ever.

In addition to that, we have a new professional baseball agreement which guarantees for somewhere between 7 and 10 years, as I understand it, although I haven't seen it, at least 160 minor league teams. I think the principal effect of your question on the minor leagues, however, would be as follows. There would be a lawsuit brought somewhere and Major League Baseball would be asked to defend that the minor league draft and the minor league reserve system was a reasonable restraint, given the nature of the industry. If they can do that, it will survive. If they can't, it will change. To what degree, I think, is unknown.

But in any event, you have to have very large numbers of minor league teams by which the talent progresses until it is capable of playing at the major league level, unless and until the colleges are prepared to substitute wholesale for it, and that is at the very least some substantial period of time away.

Senator DEWINE. Mr. Peltier, do you want to comment on my hypothetical, which is only a hypothetical, that if you would do away with the whole antitrust exemption for all of baseball, including minor leagues, what would I see in 10 years in the minor leagues?

Mr. PELTIER. Well, I think one of the things that you have to realize, too, is that each player that goes through the minor league organizations is paid by the parent club. So to the extent that the minor league owner has an interest in the team itself or in the individual players, it is only to the extent that it helps the team win so that they can increase their bottom line.

I think what people fail to realize is that from a minor league perspective, your major goal as a player is to get to the big-league level. Especially at the triple A level, it is difficult in the sense that you have no sense of team unity because everyone is trying to get to the ultimate goal of playing in the big leagues. So to say that it would destroy minor league baseball, you know, in its present form, I think, is stretching it, you know, to the extent that minor league baseball exists now for the fans because they want to have some feeling of belonging to the major league club that their team is affiliated with. But I don't think that—you know, with the present scenario, I don't think that the antitrust laws would have any effect in terms of destroying the minor leagues in their entirety right now.

Mr. FEHR. I just might add I think the figures are that last year—and I think the projections are for this year upwards of 30 million—33 million sticks in my mind—fans will attend minor league games in organized professional baseball. That is a large

consumer base. One would think that that audience will be served especially if you had a more free market. It is difficult for me to imagine people walking away from the fans.

Mr. PELTIER. Something else, too. I played with the St. Paul Saints, and the difference between the St. Paul Saints and any of the minor league teams that I played for before is the fact that the team, the Saints, own the rights to that player because that team individually—the owner of the St. Paul Saints pays the salaries, so they have more of a vested interest in the players themselves. You know, I think that scenario works best in the sense that, you know, now they have a vested interest and they are going to promote their players as best they can, which in turn will help the team and the bottom line and the community.

Senator DEWINE. That team has been very, very successful.

Mr. PELTIER. Absolutely. I mean, the profit that they have made——

Senator DEWINE. They sell out, don't they?

Mr. PELTIER. I would say 95 percent of the time it is a sellout, and I think it is a reflection of how the team is structured and what the purpose of that team is. You know, not disregarding the fact that every player on that team wants to get back to organized baseball, but the way that that team is run has definitely been a successful way of doing things.

Senator DEWINE. Well, I appreciate the testimony from both of you very much. It has been very helpful, and we will conclude the hearing. Thank you very much.

[Whereupon, at 11:32 a.m., the committee was adjourned.]



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